United Nations A/71/626

General Assembly

Distr.: General
23 November 2016

Original: English

Seventy-first session
Agenda item 68 (c)
Promotion and protection of human rights: human rights situations and reports of special rapporteurs and representatives

Letter dated 21 November 2016 from the Permanent Representative of the Syrian Arab Republic to the United Nations addressed to the Secretary-General

I would like to draw your attention to the legal breach, which took place on 15 November 2016, at the 48th meeting of the Third Committee, during the proceedings to take action on the draft resolution entitled "Situation of human rights in the Syrian Arab Republic" (A/C.3/71/L.24), under agenda item 68 (c).

The sponsors of the draft resolution used, for known political reasons, terminology that is in legal violation of the Charter of the United Nations and its purposes when they referred, in the text of the draft resolution, to the Syrian Arab Republic as the "Syrian regime". This illegal term was used five times in the draft resolution, in the following paragraphs: twelfth preambular paragraph and operative paragraphs 7, 10 and 24.

In response to this serious legal violation, I requested a legal opinion of the Legal Counsel of the United Nations to determine the legality of the use of such a term in United Nations resolutions when referring to a Member State.

However, the legal opinion provided was shocking, and even contrary to the Charter, its principles and objectives. The representative of the Secretariat at the meeting verbally conveyed the legal opinion of the Deputy to the Legal Counsel as follows:

> "The first, is to recall that the use of the term 'Syrian regime' is not new; it has been included in resolutions adopted by this Committee and the General Assembly. There is precedent in this respect.
>
> "The second point, is that while the distinguished Permanent Representative of Syria has raised whether or not the term 'Syrian regime' is legal in the context of a draft resolution, the Secretariat is of the view that this question does not rise to a legal question; it is not a question of a legal nature, per se.

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"Based on this clarification provided by the Secretariat, Madam Chairperson, we recommend that we proceed with the consideration of the draft resolution, and I hope that the clarification would satisfy the delegation of the Syrian Arab Republic".

First, I would like, in this regard, to put on record our reservation and objection to the full legal opinion received from the Deputy to the Legal Counsel. Second, I will prove here the invalidity of this legal opinion and its explicit violation of the Charter of the United Nations and its principles and objectives.

Article 2, paragraph 1, of the Charter provides that "The Organization is based on the principle of the sovereign equality of all its Members".

– Based on this provision of the Charter, the realization of the principle of the sovereign equality of all Member States must be respected. In its application, it is therefore incumbent on all Member States and the United Nations to address and refer to another Member State by its formal recognized name. The commitment to using the official name of every Member State ultimately reflects respect for its people and its Government and adherence to the principle of sovereign equality.

Needless to say, the term "regime" is of a purely political nature, and the goal of using it is the political expression of disrespect for certain States and Governments. Thus, the use of this term in United Nations formal documents reflects the politicization of the Organization's tasks and resolutions, in order to achieve the well-known political agendas of some States. Therefore, we believe that it is the duty of the United Nations to distance itself from such disgraceful political behaviour. Otherwise, the United Nations is making itself the subject of suspicion and mistrust regarding its credibility, impartiality and integrity.

Thus, the use of the term "regime" in the context of the resolution referred to above is a clear legal violation of the principles of the Charter and its objectives.

This makes the legal opinion of the Deputy to the Legal Counsel inaccurate, scandalous and lacking in any legal basis. Moreover, it is in clear violation of the Charter.

Moreover, the use of the term "regime" in previous resolutions of the Third Committee, or of the General Assembly, does not mean that it became, under any conditions, an acceptable precedent. It is crucial to be aware that the legal opinion of the Deputy to the Legal Counsel poses a real threat to the standing of the United Nations and its independence and integrity. By choosing this hasty position, the Deputy to the Legal Counsel has put the Secretariat of the United Nations in the position of both adversary and judge, rather than maintaining its role and independence as the main international organ in charge of advocating and protecting the principles of justice, equality and the rule of law.

It is inevitable that violation of the Charter of the United Nations constitutes a serious legal case, which applies to the present situation.

Thus, I request that the Deputy to the Legal Counsel immediately withdraw his "legal opinion", which was presented at the meeting of the Third Committee.

I have brought to your attention this serious breach with a view to allowing you to take remedial action as soon as possible. Otherwise, this legal breach will establish a new era at the United Nations, in which some Member States will resort to such breaches, using the Organization as a tool to achieve political agendas, destroy relations among States and threaten multilateral international legitimacy.

I call upon you to use your authority to ensure that the legal opinion referred to above is rescinded.

Moreover, I request the issuance of a legal opinion based on Article 2, paragraph 1, of the Charter, as a reference when referring to any Member State in United Nations documents and resolutions.

If the Secretary-General decides otherwise, I would like to request a formal letter from the Secretariat, including the legal opinion issued by the Deputy to the Legal Counsel regarding the use of the term "regime" in resolutions adopted by organs of the United Nations, in order to take legal action to ensure that the sovereignty of the Syrian Arab Republic and all Member States is respected in accordance with the Charter and to prevent the use of any illegal precedent in violation of the Charter.

It would be highly appreciated if the present letter could be circulated as a document of the General Assembly.

(*Signed*) Bashar **Ja'afari**
Ambassador
Permanent Representative